

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
DELMARVA POWER & LIGHT COMPANY FOR)
APPROVAL OF A VOLUNTARY PROGRAM FOR) PSC DOCKET NO. 17-1094
PLUG IN VEHICLE CHARGING)
(FILED OCTOBER 19, 2017))

**DELAWARE PUBLIC SERVICE COMMISSION STAFF’S OPPOSITION TO PETITION
OF THE UNIVERSITY OF DELAWARE’S ELECTRIC VEHICLE RESEARCH AND
DEVELOPMENT GROUP TO INTERVENE**

The Delaware Public Service Commission Staff (“Staff”) hereby objects to the University of Delaware’s Electric Vehicle Research and Development Group’s (“UD”) Petition to Intervene (the “Petition”) regarding Delmarva Power & Light Company’s (“Delmarva”) Application for approval of a voluntary program for plug in vehicle charging (“Application”). In support, Staff states as follows:

1. For brevity, Staff provides the pertinent chronology illustrating the Petition’s untimeliness:

DATE:	DOCKET ENTRY and, where applicable, PROCEDURAL MANDATE
Oct. 19, 2017	Delmarva’s Application
Oct. 24, 2017	Division of the Public Advocate’s (“DPA”) Statutory Notice of Intervention
Nov. 30, 2017	Order No. 9150, Ordering ¶5 – <u>Jan. 12, 2018 deadline for intervention;</u> Ordering ¶3 – <u>Feb. 28, 2018 deadline for written comments.</u>
Nov. 28, 2017	Caesar Rodney Institute’s (“CRI”) timely Petition to Intervene
Nov. 30, 2017	Sierra Club’s timely Petition to Intervene
Jan. 12, 2018	DNREC’s ¹ timely Petition to Intervene
Oct. 24, 2017 - Feb. 28, 2018	Edison Electric Institute, Harry L. Williams, President of Delaware State University (“DSU”), ChargePoint, and Greenlots filed timely written comments
Oct. 3, 2018	UD’s untimely Petition to Intervene

¹ Department of Natural Resources and Environmental Control.

2. Order No. 9150 states that “[l]ate-filed petitions to intervene will not be granted unless good cause is shown.”² (Order No. 9150, November 30, 2017, Ordering ¶ 5) Showing good cause requires a “legally sufficient reason.” (BLACK’S LAW DICTIONARY 213 (7th ed. 1999) The adverb “legally” denotes “a manner that accords with the law.” (*Id.* at 905) The adjective “sufficient” denotes “of such quality, number, force, or value as is necessary for a given purpose.” (*Id.* at 1447) It is UD’s burden to show good cause, yet the Petition inexplicably makes no attempt to meet that burden.

3. The Petition relies solely upon UD’s purported participation and interest. It does not address, let alone argue, the required good cause standard. UD did not act in a manner which “accords with the law.” (*Id.* at 905) Here, the law is memorialized in Order No. 9150 and 26 *Del. Admin. C.* § 1001-2.9.2. UD is a sophisticated entity; hence, its allowing deadlines to pass was a tactical decision, not an inadvertent oversight. The Petition provides no legally sufficient reason indicative of good cause shown – none exists. That omission equates an admission – an admission that good cause cannot be shown – and renders the Petition a mere summary of UD’s being interested in and supportive of Delmarva. The foregoing alone should end further consideration in denying the Petition.

4. Intervention is permitted only where the pending matter “directly affects a real interest held by that party.” (*Street Search Partners v. Ricon Int’l*, C.A. No. 04C-09-191, 2006 WL 1313859, at *2 (Del. Super. Ct. May 12, 2006) “[T]he applicant must show that it holds an interest ..., that the interest will be directly and immediately affected by the litigation, and ... representation provided by existing parties at bar is inadequate to protect the applicant’s interests.” (*Id.*)

5. UD is interested in this docket. Yet it does not possess “a real interest” directly and immediately affected by this docket. UD’s letter was one of several such supporting attachments to the Application filed almost one year ago. UD filed another letter dated January 15, 2018, again

² This directive shadows 26 *Del. Admin. C.* § 1001-2.9.2, codifying that “[l]ate intervention may be sought and granted for good cause shown.” (emphasis added).

voicing support for Delmarva but adducing no real interest of its own. UD's interestedness is further evidenced by its attending the January 16, 2018 New Castle County public comment sessions – a mere four days after the intervention deadline had passed.

6. Staff will not belabor the obvious: (1) this matter is of interest to UD, and UD is supportive of Delmarva; (2) the Petition, *filed nearly nine months late*, makes no showing of good cause; and (3) the parties to this docket should not be burdened and prejudiced by further delay imposed by way of an intervenor offering some unknown level and form of gratis consultation.

WHEREFORE, Staff respectfully requests that UD's untimely Petition to Intervene be denied. Further, UD should be prohibited from submitting prefiled testimony or proffering oral testimony at the scheduled evidentiary hearings. Alternatively, if UD is permitted to submit prefiled testimony, Staff requests the right to serve discovery on UD prior to the evidentiary hearings.

Dated: October 8, 2018

/s/ Thomas D. Walsh
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